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Supreme Court of the United States

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October Term, 1968

No. **19**

UNIVERSAL INTERPRETIVE SHUTTLE CORPORATION,

Petitioner,

vs.

**WASHINGTON METROPOLITAN AREA TRANSIT COM-
MISSION, D. C. TRANSIT SYSTEM, INC., WASHING-
TON SIGHTSEEING TOURS, INC., BLUE LINES, INC.,
AND WHITE HOUSE SIGHTSEEING CORPORATION.**

**Petition for a Writ of Certiorari to the United States
Court of Appeals for the District of Columbia.**

**JEFFREY L. NAGIN,
ALLEN E. SUSMAN,**

**Suite 444,
9601 Wilshire Boulevard,
Beverly Hills, Calif. 90210,**

Attorneys for Petitioner.

Of Counsel,

ROSENFELD, MEYER & SUSMAN.



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AND WHITE HOUSE SIGHTSEEING CORPORATION.

**Petition for a Writ of Certiorari to the United States
Court of Appeals for the District of Columbia.**

Universal Interpretive Shuttle Corporation petitions for a writ of certiorari to review the order of the United States Court of Appeals for the District of Columbia Circuit which was entered on June 13, 1967.

Opinions Below.

The opinion of the District Court is set forth in Appendix B and the order of the Court of Appeals reversing the order of the District Court is set forth in Appendix A.

Jurisdiction.

The order of the Court of Appeals was entered on June 13, 1967. A Petition for *en banc* rehearing was denied on October 3, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

Questions Presented.

1. Did Congress, in approving the interstate compact creating the Washington Metropolitan Area Transit Commission, intend to take away from the executive department of the United States, its exclusive control of the central Mall area of the District of Columbia and to give the Washington Metropolitan Area Transit Commission the power to prevent the United States from conducting, through a private concessioner, a service which provides a narrative description of points of interest within the central Mall area while carrying visitors around the area in trams?
2. Is a mobile service provided by a concessioner of the United States within the central Mall area for the purpose of providing visitors a narrative description concerning points of interest, "transportation for hire" within the meaning of the interstate compact creating the Washington Metropolitan Area Transit Commission?
3. Is a mobile interpretive service utilizing vehicles bearing the National Park Service emblem and operated by a concessioner on federally owned and managed park lands under a contract with the Federal Government which provides for the control of every detail of operation by the Secretary of Interior and for a division of gross proceeds between the concessioner and the Govern-

ment, transportation "by the Federal Government" within the meaning of the interstate compact creating the Washington Metropolitan Area Transit Commission?

4. Does the Washington Metropolitan Area Transit Commission whose jurisdiction is limited to the regulation of persons providing "transportation for hire . . . between any points in the Metropolitan District" have regulatory jurisdiction over a mobile interpretive service conducted within the central Mall area which service originates and terminates at the same point, with no passengers embarking or debarking en route?

5. Is the Congressionally enacted franchise of a common carrier, which prohibits the operation of a competitive bus or railway line transporting passengers over a given route on a fixed schedule without a certificate being issued by a local regulatory agency, violated by the operation without a certificate of a mobile interpretive service within the central Mall area when the Secretary of Interior retains the right from time to time to change rates, routes and schedules of the service?

Statutes Involved.

The primary statutory provisions involved are as follows:

The Washington Metropolitan Area Transit Regulation Compact as approved by Act of September 15, 1960, 74 Stat. 1031, D. C. Code § 1-1410 to 1-1416 (1961 ed.); 16 U.S.C. §§ 1, 1c, 2, 3, 17b, 20, and 20a-g; and D. C. Code §§ 8-108 and 8-144. Relevant portions of the aforementioned Compact and statutes are printed in Appendix D.

Statement of the Case.

On May 29, 1967, the United States of America executed a contract (the Contract) which is reproduced in Appendix C with Universal Interpretive Shuttle Corporation (Universal) for the operation by Universal of an interpretive shuttle service in the central Mall area of Washington, D. C.

The Washington Metropolitan Area Transit Commission (WMATC), an agency created by an interstate compact between the States of Maryland and Virginia and the District of Columbia, with the consent of Congress, Act of September 15, 1960, 74 Stat. 1031, D. C. Code §1-1410, commenced this action in the United States District Court for the District of Columbia to enjoin Universal from operating under the Contract without first obtaining a certificate of convenience and necessity from WMATC.

D. C. Transit System, Inc. (D.C. Transit), Washington Sightseeing Tours, Inc., Blue Lines, Inc., and White House Sightseeing Corporation each of which holds a certificate from WMATC to operate charter and sightseeing services (D.C. Transit also holds a certificate to perform regular route service) intervened as parties plaintiff. The United States filed a representation of interest in support of Universal's position and participated in all the proceedings in the District Court.

The District Court dismissed the complaint and all of the plaintiffs thereafter appealed to the United States Court of Appeals for the District of Columbia. The United States as *amicus curiae* and Universal sought affirmance in the Court of Appeals of the District Court's judgment, but a three-judge panel of the

Court of Appeals (one judge dissenting) reversed the order of the District Court. Universal petitioned the Court of Appeals for an *en banc* rehearing and the United States filed an *amicus curiae* brief in support of Universal's petition. On October 3, 1967, the petition was denied.

The Central Mall area is included within the National Park System and as such is specifically committed to the "exclusive charge and control" of the Director of the National Park Service, a subordinate of the Secretary of the Interior, by the Act of July 1, 1898, 30 Stat. 570, as amended, D. C. Code §8-108. It is bounded on the north by the White House, on the east by the Grant Memorial, on the south by the Jefferson Memorial, and on the west by the Lincoln Memorial [Government and Deft's Ex. 6]. The Central Mall, which contains and is flanked by some of the foremost national shrines and many points of historic, educational, aesthetic and patriotic importance, is a focal point of interest in the Federal City.

It has been estimated that more than 12 million persons visited the central Mall area in 1965 and the Director of the National Park Service believes that this number will substantially increase in the near future [Government and Deft. Ex. 4, p. 1]. The present parking and traffic circulation facilities within the central Mall area are already, according to the Director, taxed to the maximum. The Director also concluded that there is an ever increasing need to provide interpretive services to visitors consisting of a well-organized, accurate, interesting, and intelligible information program concerning the many points of interest in and around the Mall area [Tr., April 26, 1967, 77,

testimony of George B. Hartzog, Jr., Director of the National Park Service].

In 1966, the Park Service instituted a six-week trial of an interpretive service in the central Mall area, using open-air vehicles. The Director concluded that the test indicated "overwhelming approval for the interpretive concept" and that proper park management required the initiation of a regular interpretive service [Affidavit of George B. Hartzog, Jr., pp. 4, 6].

The Park Service has developed a long-range master plan for the Mall which has been approved in concept by the National Capital Planning Commission. The plan contemplates placing parking and bisecting streets underground and converting the central Mall into a vast open area reserved for pedestrians. An integral part of the plan calls for the elimination of all vehicular traffic other than trackless trains (trams) of the type specified by the Contract. Thereafter, the Secretary of Interior (Secretary) acting pursuant to the authority contained in 16 U.S.C. §§ 1-3, 17b, 20, 20a-g, and in D. C. Code § 8-108, issued a prospectus inviting proposals from private firms to enter into a contract to provide visitor interpretive services.

Universal and D. C. Transit were among the firms submitting proposals.

Universal won the award from the Secretary. Prior to entering into the formal agreement Universal was informed by the Department of the Interior that the Secretary had exclusive charge and control over the central Mall area, and that the interpretive service required by the Contract would be subject only to the requirements imposed by the United States of Amer-

ica. On March 27, 1967, Universal executed the Contract, but since the term of the Contract extended through December 31, 1977, the Contract was submitted to Congress for a 60-day waiting period, after which time it was executed on behalf of the United States and became a mutually binding agreement.¹

In the Contract the Secretary authorized the concessioner Universal:

"... to establish, maintain, and operate a Visitor Interpretive Shuttle Service for the public within the Mall area of the city of Washington, National Capital Region, National Park Service, which service may include visitor interpretive service originating and terminating at the same point, with no passengers embarking or debarking en route, and such other types of service as may be approved by the Secretary, along such routes as may be approved by the Secretary, on a year-round basis (except Christmas Day), under applicable laws, rules, and regulations of the Federal Government, and to use in connection therewith such Government-owned lands and improvements as may be designated by the Secretary." (Contract, §2(a)).

The Contract requires Universal to station guides at eleven designated points of national interest along the Mall. Such guides are required to wear uniforms approved by the Park Service and to be thoroughly

¹The United States and Universal also entered into an interim agreement dated March 24, 1967 in order to permit the initiation of the interpretive service during spring 1967; the interim agreement stated that it would expire no later than June 30, 1967.

conversant with the geography and history of the nation's capital. The stationary guides will be prepared to furnish information about the city and its facilities to all persons regardless of whether they have paid for the visitors' interpretive shuttle service [District Court opinion].

Universal is required by the Contract to operate a mobile interpretive service utilizing trams of a design approved by the Secretary (each tram is to be manned by a tour guide and by a driver). The service will be conducted entirely on land owned by the United States in the central Mall area of the National Capital Parks.² Each tram will bear the insignia of the National Park Service. As the tram proceeds through the Mall, the guides present a narration to the visitors. The Contract states that the interpretive function is a prime consideration thereunder (Contract, §6(c)).

It is expected that two basic types of interpretive service will be provided. First, Universal must furnish a "round trip" interpretive tour originating and terminating at the same point with no passengers em-

²The interpretive trams may cross some streets administered by the District of Columbia such as 14th Street, 7th Street and 4th Street [Tr. April 26, 1967, 93]. However, ultimate control of such streets bisecting the Mall area is vested in the Director of the National Park Service by D.C. Code §8-144. It is also possible that, during temporary construction of the Inner Loop in the vicinity of the Grant Memorial, the interpretive trams may proceed briefly along 2nd Street, which is administered by the District of Columbia. The Director of the National Park Service has authority to arrange for access along such streets by reason of D.C. Code §8-135, by arranging a transfer of jurisdiction through a simple exchange of letters between the Director of the National Park Service and the Commissioners of the District of Columbia. Such arrangements are now being made [Tr. April 26, 1967, 95].

barking or debarking en route (Contract, §2(a)). Second, the Contract contemplates that Universal may, with the approval of the Secretary, provide an interpretive shuttle service whereby passengers can commence the narrated tour, proceed to a given point of interest, disembark, remain at that point of interest and later join another tram at that point and continue the narrated tour.

The Contract provides for close and continuous regulation by the Secretary of every phase of the activities of Universal; for example, the Secretary controls both the type and number of mobile units to be utilized, rates, routes, hours of service, schedule of trips, and content of narration. The Secretary has assigned government lands and government improvements to be utilized by Universal in connection with operations. Universal agrees to pay a fee to the United States based on Universal's gross receipts from the interpretive service. The Secretary prescribes the manner in which the accounting records of Universal shall be maintained; both the Secretary and the Comptroller General of the United States have the right to examine Universal's books. The Contract requires that Universal carry casualty and liability policies and that the United States of America be named as co-insured in liability policies. The United States is given a first lien on all assets of Universal utilized in the visitor's interpretive shuttle service.

D. C. Transit now operates some fixed route mass transit through the Mall with the specific permission of the Secretary of the Interior [Government and Deft. Ex. 1, 2]. D. C. Transit and other intervening sightseeing companies, as well as others similarly situated, are now operating chartered sightseeing services

through the Mall at the sufferance of the Secretary [Tr., April 26, 1967, 84-85, 106]. The Director of the Park Service testified that the Park Service does not plan to interfere with existing sightseeing bus operations that go through the Mall [Tr., April 26, 1967, 84], and indeed the Park Service plans to increase surface parking spaces available for sightseeing busses on the central Mall after the interpretive service is in operation [Tr., April 26, 1967, 108].

At such time as vehicular traffic is eliminated from the central Mall, the Park Service intends to provide ample underground parking for busses operated by charter sightseeing companies [Tr., April 26, 1967, 80, 85, 107-108].

Almost immediately after the Department of the Interior announced the award of a contract to Universal, WMATC notified Universal of its contention that Universal could not lawfully operate under the Contract unless and until Universal obtained a certificate of convenience and necessity from WMATC. When Universal responded that on the basis of the advice given to it by the Department of the Interior, it would not apply for such a certificate, WMATC commenced this action in the District Court; during the pendency of this action, Universal has not operated under the Contract. Each of the intervening plaintiffs joined in WMATC's contention that Universal cannot lawfully operate under the Contract without obtaining a certificate of convenience and necessity from WMATC and, in addition, D. C.

Transit urged that Section 3 of its Franchise, Act of July 24, 1956, 70 Stat. 598, protected it from competition unless the competitor obtained a certificate from WMATC.

In an extensive opinion dismissing plaintiffs' complaints, the District Court found that the interpretive service contracted for by the Secretary was to be conducted within an enclave over which the Secretary has exclusive jurisdiction and is therefore not transportation within the means of the WMATC Compact. Alternatively, the District Court held that even if WMATC had jurisdiction over services to be performed in the central Mall area, the services to be performed by Universal were "transportation by the Federal Government" and therefore expressly exempt from the provisions of the Compact. The District Court also found that the proposed interpretative tour service did not violate the protection accorded to D. C. Transit in its Franchise.

In reversing the District Court, the Court of Appeals did not hand down an opinion. Its order merely recited the conclusion that,

"The various relevant statutory provisions, construed in relation one to the other, especially in view of the physical location of the Mall in the Metropolitan area of the District of Columbia, do not afford authority to the appellee Universal Interpretative Shuttle Corporation validly to engage in such transportation for hire in the Mall area as is contemplated by the [Contract] . . . without a certificate of public convenience and necessity issued by the Washington Metropolitan Area Transit Commission authorizing such transportation"

Reasons for Granting the Writ.

The immediate effect of the decision of the Court of Appeals is to hold that WMATC, a local agency representing the parochial interests of the immediate area, can veto the determination of the executive branch of the Federal Government to provide a new and meaningful interpretive service on the central Mall and to realize revenues from such a service. The drastic restrictions which such a decision imposes upon the Federal Government concerning a geographical area over which the Federal Government has, by congressional direction, exercised exclusive jurisdiction, particularly without the benefit of an opinion, fully justifies review by this Court. A review is further warranted by the unique nature of the Mall. The Mall is, in a very real sense, the physical center of our National Government and as such its future is of concern to all the people of the United States. The decision of the Court of Appeals has far reaching negative implications for the present plans of the Federal Government for the development and enhancement of the Mall.

1. WMATC does not have jurisdiction to regulate activities directly authorized by the Secretary in the central Mall area.

By the Act of July 1, 1898, 30 Stat. 570 as amended, D. C. Code § 8-108, Congress specifically provided that:

"The park system of the District of Columbia is placed under the *exclusive charge and control* of the Director of the National Park Service, under such regulations as may be prescribed by the President of the United States." (Emphasis supplied).

The Act of August 25, 1916, 39 Stat. 535 as amended, 16 U.S.C. §§ 1-3, provides that the Director of the Park Services "shall, under the direction of the Secretary of the Interior, have the *supervision, management and control* of the several national parks and national monuments," and that "the Secretary of the Interior shall make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks, monuments and reservations under the jurisdiction of the National Park Service" (Emphasis supplied.)

The Act of May 26, 1930, 46 Stat. 382, 16 U.S.C. §17b, provides that

"The Secretary of the Interior is authorized to contract for services or other accommodations provided in the National Parks and National Monuments for the public under Contract with the Department of the Interior, as may be required in the administration of the National Park Service, at rates approved by him for the furnishing of such services or accommodations to the Government" (Emphasis supplied).

In 1965 after re-examining the authority of the Secretary Congress specifically found that the

"preservation of park values requires that such public accommodations, facilities, and services as have to be provided within those areas should be provided only under carefully controlled safeguards against unregulated and indiscriminate use

It is the policy of the Congress that such development shall be limited to those that are necessary and appropriate for public use and enjoyment of

the national park area on which they are located and that are consistent to the highest practicable degree with the preservation and conservation of the areas." 16 U.S.C. §20.

Congress then authorized the Secretary to make contracts with concessioners and provided for detailed regulation of concessioners. 16 U.S.C. §20a-g.⁸

Prior to the Compact the Secretary had exclusive jurisdiction over all activities, including transportation, within the National Park areas in the District of Columbia. Neither the Public Utilities Commission (PUC) which regulated transportation for hire within the District of Columbia nor the Interstate Commerce Commission (ICC) ever asserted jurisdiction over the Mall area, within the District of Columbia in derogation of the exclusive charge and control granted the Secretary over National Parks. See Interstate Commerce Act, Act of August 9, 1935, 49 Stat. 544, as amended, 49 U.S.C. §§303(b)(4), 309(a); District of Columbia Traffic Act of 1925, 43 Stat. 1119 as amended, Act of February 27, 1931, 46 Stat. 1424.

Approval of WMATC's claim of jurisdiction creates an irreconcilable conflict with the regulatory authority vested in the Secretary. If Universal must obtain a certificate from WMATC before being permitted to operate under the Contract, by refusing the certificate WMATC would completely thwart the Secretary's

⁸The authority of the Secretary to enter into a Contract to provide for transportation services, was upheld in *United States v. Gray Line Water Tours of Charleston*, 311 F. 2d 779, 781 (4th Cir. 1962). Furthermore the Contract was sent to Congress for 60 days pursuant to 16 U.S.C. §17b(1) prior to being executed by the Secretary and no adverse congressional comment was received.

"management and control" of the central Mall area. Even if WMATC were to issue a certificate Universal would be subjected to, at the very least, a complete duplication of regulation, and the Secretary's control over all phases of the operation would be superseded by WMATC's detailed regulatory control. It takes very little imagination to foresee the difficulties which the Secretary would encounter in the administration of the Mall area if such critical matters as routing and hours of operation were not within his control. Furthermore, if WMATC has jurisdiction over Universal's operations under the Contract, WMATC, rather than the Secretary, would regulate Universal's rate structure which of course is one of the fundamental elements in the Contract, taking into account as it does factors (such as the uncompensated services provided by Universal and the fees to be paid by Universal to the United States) which are wholly outside the concern of WMATC.

WMATC has contended that its jurisdiction over Universal's operations under the Contract is a result of the grant of affirmative regulatory powers to WMATC under the Compact. The central Mall is a shrine for the nation's two hundred million people and long before ratifying the Compact, Congress committed the responsibility for all aspects of the central Mall's care and utilization to the Secretary as a representative of the National Government. Implicit in WMATC's contention is that Congress intended to strip the Secretary and the National Government of exclusive control of the central Mall area and to inject into the management of that area WMATC, an essentially local body consisting of three (3) men representing, respectively, the

District of Columbia, and the States of Maryland and Virginia. It should take clear and convincing evidence that Congress, in approving a compact to which United States is not itself a party, intended such a drastic realignment of powers previously conferred upon the executive department. Such evidence is totally lacking.

No specific provision of the Compact in support of this contention has ever been cited and the legislative history overwhelmingly refutes such a contention. Prior to approving the Compact, Congress considered it at length and the point was repeatedly made that the Compact would not create any new regulatory powers but would merely effect the transfer of jurisdiction to a single regulatory body, WMATC, from the four independent regulatory bodies then regulating transportation for hire in the Washington Metropolitan area. See *e.g.*, H. Comm. on Jud., 86 Cong., 2d Sess. (1960), Pt. 1, p. 104, Pt. 2, pp. 118, 248.

WMATC has relied upon the general suspension of laws provisions of the Compact and enabling legislation, Compact, Article VIII, Article XII §20(a); D.C. Code §1-1412, as its basis for contending that, *sub silentio*, the Secretary was deprived of his exclusive jurisdiction over transportation services within the National Park areas in the Washington Metropolitan area. This argument ignores the fact that Congress, in approving the Compact, was very aware of the laws it was suspending. The Joint Congressional Committee considering the Compact set out in chart form the

existing federal laws that were to be suspended either in whole or in part by the Compact. 86th Cong., 2nd Sess., H. Rep. 1621, pp. 29-30. The statutes listed therein include parts of 49 U.S. Code, Titles 40, 42, and 44 of the D.C. Code. *Ibid.* Totally absent from this chart is any reference to suspension or limitation of those statutes providing that the District of Columbia National Park areas are within the exclusive jurisdiction of the Secretary.

Section 3 of the Act of September 15, 1960, 74 Stat. 1050, D.C. Code §1-1412, provides specifically that the Compact shall not affect the "normal and ordinary police powers of the signatories and of the political subdivisions thereof and of the Director of the National Park Service with respect to the regulation of vehicles, control of traffic, use of streets, highways, and other vehicular facilities." The Court of Appeals either ignored the foregoing or concluded that the reference to "police powers" amounted to a limitation on the existing authority and responsibilities of the Park Service. Although Congress did not include a broader reservation proposed by the Director of the Park Service, 86th Cong., 2nd Sess., H. Rep. 1621, p. 49, there is no reason why the term "police powers" should not be interpreted as including the full scope of the pre-existing authority delegated by Congress to an executive agency to make rules and regulations relating to property of the United States at least insofar as such authority relates to the operation of vehicles. As the court said

in *Tennessee v. United States*, 256 F. 2d 244, 258 (6th Cir., 1958):

Since Congress has the power to "make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States" (Constitution, art. 4, §3, cl. 2), this power of the United States, analogous to the police power of a state, is clearly applicable where the lands of the United States are concerned.

See also *Robbins v. United States*, 284 Fed. 39, 45 (8th Cir. 1922). Since the Secretary had the authority, prior to the enactment of the Compact, to authorize without the approval of the PUC or the ICC, a service involving vehicles of the type provided for under the Contract, the police power reservation in the Compact has expressly preserved that authority.

2. Even if Congress by consenting to the Compact intended to impose a limitation upon the Secretary's exclusive control over the central Mall area, the service to be provided by Universal under the Contract is nevertheless not subject to WMATC jurisdiction.

(a) The Compact covers "transportation for hire by any carrier of persons between any points in the Metropolitan District. . . ." It is obvious from the circumstances surrounding the enactment of the Compact that the word "transportation" as used in the Compact is not descriptive of Universal's services under the Contract.

In early 1954 a joint commission of representatives from Maryland, Virginia and the District of Columbia was established to consider:

"(1) the adequacy of present passenger carrier services in the Washington Metropolitan area, and

(2) whether joint action . . . is necessary or desirable in connection with the regulation of passenger carrier facilities operation in such area.”
86th Cong., 2nd Sess., H. Rep. 1621, p. 4.

In 1955, the 84th Congress appropriated funds to enable the National Capital Planning Commission and the National Capital Regional Planning Council:

“to jointly conduct a survey of the present and future mass transportation needs of the National Capital region” *Ibid.*

These studies revealed many problems in commuter service in the Washington Metropolitan area and adoption of an interstate compact was recommended to alleviate these mass transit problems. The Compact was negotiated and became effective by the congressional consent given in the Act of September 15, 1960, 74 Stat. 1031, D.C. Code §§1-1410 to 1-1416.

That the purpose of the Compact is to resolve the many commuter and mass transit problems confronting the Washington Metropolitan area is emphasized by the Preamble to the Compact which states:

“Whereas the regulation of *mass transit service* in the metropolitan area of Washington, District of Columbia, is divided among the public utility regulatory agencies of the States of Virginia, Maryland, and the District of Columbia and the Interstate Commerce Commission; and

“Whereas such divided regulatory responsibility is not conducive to the *development of an adequate system of mass transit for the entire metropolitan area*, which is in fact a single integrated, urban community” (Emphasis supplied).

The service to be provided by Universal under the Contract is distinguishable from mass transit or commuter services. Although Universal will carry persons around the central Mall area, such movement is incidental to the primary purpose of the United States in entering into the Contract of bringing visitors into meaningful contact with points of interest located in the central Mall area and providing the visitors with information concerning these points. Thus, Universal will furnish stationary guides at eleven designated points who are to be prepared to supply information to all visitors regardless of whether they have paid for the interpretive shuttle service. The vehicles will be operated on areas under the control of the Secretary and not on public streets or highways as is required by Article XII, §2(b) of the Compact. Universal's service will not in any way compete with forms of mass transit in bringing persons from outside the central Mall area into that area.⁴

(b) Section 1(a)(2) of Article XII of the Compact excepts "transportation by the Federal Government". As a concessioner, Universal will be providing a service which the Government could, and has in the past on a temporary basis, directly provided. WMATC has acknowledged that if the service were provided by vehicles owned and operated by the Park Service, the operation would be exempt under the aforementioned section of the Compact; but WMATC contends that what the

⁴The service to be provided under the Contract is distinguishable from sightseeing and charter services which operate not only within the confines of the National Parks but also pick persons up outside the National Parks and generally carry them for large distances on public streets and highways; such sightseeing services clearly compete with modes of mass transportation in the movement of persons within the Metropolitan District.

Federal Government can do directly, it cannot do indirectly through its own concessioner. The Court of Appeals acceptance of this position is clearly erroneous. Universal's day to day activities will be so intertwined with those of the Park Service as to be virtually indistinguishable; indeed, the trams will bear a Park Service emblem, the Universal personnel will wear uniforms approved by the Park Service, and the United States will share directly in Universal's gross revenues from the service. In every meaningful sense, any interference by WMATC with Universal's activities under the Contract would constitute a direct interference with the Federal Government in the discharge of its management responsibilities over the National Parks. Under these circumstances, for purposes of applying the Compact, the service to be provided by Universal is an activity of the Federal Government, and accordingly, exempt from WMATC's jurisdiction. Cf., *Leslie Miller, Inc. v. Arkansas*, 352 U.S. 187 (1956); *Yearsley v. W. A. Ross Construction Co.*, 309 U.S. 18, 22 (1940).

(c) The Compact only applies to "transportation for hire by any carrier of persons *between any points . . .*" (Emphasis supplied). Section 2(a) of the Contract contemplates

"visitor interpretive service originating and terminating *at the same point*, with no passengers embarking or debarking en route, and such other types of service as may be approved by the Secretary. . . ." (Emphasis supplied).

Thus, the primary service to be offered by Universal does not fall within the jurisdictional requirement of the Compact, namely, that there be transportation "be-

tween any points". This very significant fact was apparently overlooked by the Court of Appeals which stated that Universal does not have authority "to engage in such transportation for hire in the Mall area as is contemplated by the contract" without obtaining a permit from WMATC.

3. D. C. Transit has raised a contention that it is protected from competition by Universal by virtue of Section 3 of its Franchise, Act of July 24, 1956, 70 Stat. 598, which provides, in essence, that no competitive railway or bus line for the transportation of passengers which runs over a given route on a fixed schedule, shall be established in the District of Columbia without a certificate being issued on the grounds that the competitive line is necessary for the convenience of the public. Since the Court of Appeals held that Universal's service under the Contract is subject to the certification requirements of WMATC, it was unnecessary for that court to consider D.C. Transit's independent contention. If this Court grants certiorari and thereafter ultimately finds that Universal's activities under the Contract are not subject to WMATC's jurisdiction as conferred by the Compact, petitioner requests this Court to dispose of D.C. Transit's contention in order to avoid any further delay in the institution of service under the Contract. The lack of merit in D. C. Transit's argument based upon its Franchise is readily apparent since, among other things, due to the Secretary's right under the Contract to change routes, rates, and schedules at any time, the service to be provided by Universal is not "over a given route on a fixed schedule".

Conclusion.

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted, -

JEFFREY L. NAGIN,
ALLEN E. SUSMAN,

Attorneys for Petitioner.

Of Counsel,

ROSENFELD, MEYER & SUSMAN.